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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,475	10/24/2003	Leonardo Jose Sanchez Aquino	F6177(V)	2548
201	7590	09/11/2006	EXAMINER	
UNILEVER INTELLECTUAL PROPERTY GROUP 700 SYLVAN AVENUE, BLDG C2 SOUTH ENGLEWOOD CLIFFS, NJ 07632-3100			PADEN, CAROLYN A	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 09/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/693,475

Applicant(s)

AQUINO ET AL.

Examiner

Carolyn A. Paden

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-6 and 8-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-6 and 8-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

The rejection of the claims over Hercules has been withdrawn for the reasons argued by applicant.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-6 and 8-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bily (4,432,999) alone or if necessary in view of Bakal (5,137,742).

Bily discloses whey-soybean product and process. Here soybean paste is added to whey solids to create an edible use for the whey solids. At column 9, lines 38-40, the presence of lactalbumin in whey solids is described. The whey and lactalbumins are considered to be the viscosity building emulsifier of the claim because applicant defines whey and lactalbumin as viscosity building emulsifiers at page 8 of the specification. The soybean component is made by cooking dehulled soybeans in a pressure cooker with water (column 5, lines 49-54). The soybeans are stated to contain 20% oil (column 4, lines 3-15) and may include lecithin. The whey/soybean combination is an oil-in-water emulsion. The claims

appear to differ from Bily in the recitation of the inclusion of a thickener.

Claim 1 appears to differ from Bily in the inclusion of a thickener. Bily is directed to a food additive useful as an emulsifier. One of ordinary skill in the art might well expect the soy/whey mix of Bily to be used with a thickener to prepare thickened edible emulsions. Bakal, in particular, utilizes rice starch to thicken low fat mayonnaise. Thus with the reference before him, it would have been obvious to thicken the whey-soybean product of Bily with starch in order to enhance the utility of the whey-soybean product to include pudding (column 2, line 10 of Bily), sauces or the mayonnaise of Bakal. It is appreciated that the amount of emulsifier and fibers are not disclosed in Bily but no unobvious or unexpected result is seen from the application of these particular amounts of ingredients. It is appreciated that "viscosity building" is not mentioned in the reference but one of ordinary skill in the art would have expected the viscosity to be further enhanced by the addition of any of the proteins in Hercules. It is appreciated that the HLB of the emulsifiers and the oil droplet size of the composition are not mentioned, but no unobvious or unexpected results are seen from the recitation of these features, particularly when a stable emulsion is formed. It is also appreciated that the settings for the

homogenizer are not mentioned but to use one type of colloid mill over another would have been an obvious matter of choice with regard to the particular homogenizing apparatus that was available. The pH of the composition is not mentioned but Bily contemplates the use of whey derived from fermentation (column 2, lines 1-12). Thus one of ordinary skill in the art would expect the pH of the composition to fall within the range of the claims.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private

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PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CAROLYN PADEN 9-7-06
PRIMARY EXAMINER 1761